

ORIGINAL

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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA**

In re:
CULINARY ADVENTURES INCORPORATED,
a Delaware corporation, Debtor.

CASE NO.: **8:08-bk-14877 ES**
Chapter 11

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: **December 10, 2009**

Time: **10:30 A.M.**

Location: **Courtroom 5A of the United States Bankruptcy Court, Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Santa Ana, California 92701**

Type of Sale: ☒ Public

☐ Private

Last date to file objections:

See attached Notice

Description of Property to be Sold: **Substantially of the Debtor's assets which consists of the assets related to operation of French 75 Laguna Beach, Savannah Chop House in Laguna Niguel, Chimayo at the Beach in Huntington Beach, and each of their respective personal property assets, real property leases, trade names, executory contracts, etc.- see the attached Notice of Motion and Motion By Debtor's for Order: (1) Approving the Sale of Substantially All of the Debtor's Assets; (2) Approving Assumption and Assignment of Leases and Executory Contracts; and (3) Approving Bidding Procedures ("Motion")**

Terms and Conditions of Sale: **See attached Motion**

Proposed Sale Price: **See attached Motion**

Overbid Procedure (If Any): **See attached Motion**

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

December 10, 2009 at 10:30 A.M., in Courtroom 5A, Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Santa Ana, California 92701

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e:mail address):

Mark Bradshaw, Esq.
Shulman Hodges & Bastian LLP
26632 Towne Centre Drive, Suite 300, Foothill Ranch, CA 92610
Telephone: (949) 340-3400; Facsimile: (949) 340-3000

Date: **November 3, 2009**

COPY

1 Mark Bradshaw - Bar No. 192540
2 **SHULMAN HODGES & BASTIAN LLP**
3 26632 Towne Centre, Suite 300
4 Foothill Ranch, California 92610-2808
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7 Attorneys for the Debtor and Debtor in Possession
8 Culinary Adventures, Inc., a Delaware corporation

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

In re

**CULINARY ADVENTURES
INCORPORATED, a Delaware
corporation,**

Debtor.

Case No. 8:08-bk-14877 ES

Chapter 11

**NOTICE OF MOTION AND MOTION BY
DEBTOR AND DEBTOR IN POSSESSION FOR
ORDER:**

- (1) APPROVING THE SALE OF
SUBSTANTIALLY ALL OF THE
DEBTOR'S ASSETS;**
- (2) APPROVING ASSUMPTION AND
ASSIGNMENT OF LEASES AND
EXECUTORY CONTRACTS; AND**
- (3) APPROVING BIDDING PROCEDURES**

**MEMORANDUM OF POINTS AND
AUTHORITIES AND DECLARATION OF
ROBERT ROURKE IN SUPPORT THEREOF**

Date: December 10, 2009

Time: 10:30 a.m.

Place: Courtroom 5A
Ronald Reagan Federal Building
and United States Courthouse
411 West Fourth Street
Santa Ana, California 92701

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1 **TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY JUDGE,**
2 **THE OFFICE OF THE UNITED STATES TRUSTEE, CREDITORS AND ALL**
3 **INTERESTED PARTIES:**

4 **I. NOTICE**

5 **PLEASE TAKE NOTICE** that on **December 10, 2009** at **10:30 a.m.** in Courtroom 5A
6 of the above-entitled Court located at Ronald Reagan Federal Building and United States
7 Courthouse, 411 West Fourth Street, Santa Ana, California 92701, Culinary Adventures, Inc., a
8 Delaware corporation, the debtor and debtor in possession herein (“Debtor”) will bring this
9 Motion for Order: (1) Approving the Sale of Substantially All of the Debtor’s Assets; (2)
10 Approving Assumption and Assignment of Leases and Executory Contracts; and (3) Approving
11 Bidding Procedures (“Sale Motion”).

12 **The Debtor has received an offer to purchase its three remaining restaurants and**
13 **related assets, leases and contracts for \$2,400,000, all cash, subject to overbids.** The
14 proposed buyer is Levon Gugasian, or his nominee (“Buyer”). Attached as **Exhibit 1** to the
15 Declaration of Robert Rourke (“Rourke Declaration”) is a true and correct copy of the letter of
16 intent from the Buyer which will be used to prepare a formal Asset Purchase Agreement
17 (“Purchase Agreement”) with the Buyer which will govern the sale transaction. Once finalized,
18 the Purchase Agreement will be filed with the Court.

19 The sale transaction will proceed such that the Assets (defined below) will be sold free
20 and clear of all liens and encumbrances. The Buyer will assume certain of the Debtor’s rights
21 and obligations arising under unexpired leases and executory contracts identified in the Purchase
22 Agreement and the schedules thereto. The Debtor shall remain liable for all obligations arising
23 under assumed contracts and lease through the closing of the sale. The Buyer will not be liable
24 for any of the debts, obligations or liabilities of the Debtor other than as described in the
25 Purchase Agreement.

26 The Debtor has also received purchase inquiries from other potential buyers, and one
27 other written offer. At this time, the Buyer’s offer provides the most value to the Debtor’s
28 bankruptcy estate (“Estate”) in exchange for the sale of the Assets. In order to capitalize on the

1 interest expressed in the Assets, this Sale Motion includes proposed Bidding Procedures and will
2 be provided to each of the parties who have expressed an interest in purchasing the Assets.

3 The proposed sale to the Buyer is subject to overbids and the Debtor encourages qualified
4 bidders to submit offers (in compliance with the Bidding Procedures) even if such offer is for
5 less than all of the Assets (i.e., one or two of the restaurants rather than all three).

6 The Debtor has been in bankruptcy since August 14, 2008 and has been attempting to
7 develop a reorganization strategy based around its profitable restaurants. All of the Debtor's
8 restaurants have been closed or sold, with the exception of the three locations covered by this
9 Sale Motion. The Debtor has determined that a sale of these three restaurants at this time is the
10 best option for the Debtor to realize value from its assets for the benefit of its creditors.
11 Operational losses at Laguna Beach stemming from actions by Kenneth A. Johnson,
12 administrative costs of operating in the chapter 11 case, and expressions of interest in purchasing
13 the Assets have all convinced the Debtor that the best strategy is to sell the Assets to Buyer,
14 subject to overbid, and wind down the bankruptcy case. Thus, based on good business reasons,
15 immediate Court approval of the sale contemplated herein will serve the best interests of the
16 Estate and its creditors.

17 The Sale Motion is based upon this Notice of the Sale Motion, the Sale Motion and
18 Memorandum of Points and Authorities in Support thereof, the Rourke Declaration, the
19 pleadings and files in the Debtor's bankruptcy case, and upon such further oral and documentary
20 evidence as may be presented to the Court in support of the Sale Motion.

21 **PLEASE TAKE FURTHER NOTICE** that any opposition or other responsive paper to
22 the Sale Motion must be filed with the Clerk of the above-entitled Court and a copy served on
23 Shulman Hodges & Bastian LLP to the attention of Mark Bradshaw at the address indicated
24 above and the Office of the United States Trustee, Ronald Reagan Federal Building and United
25 States Courthouse, 411 West Fourth Street, #9041, Santa Ana, California 92701-8000 at least
26 fourteen days prior to the hearing in the form required by **Local Bankruptcy Rule 9013-1(f)**.

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1 **PLEASE TAKE FURTHER NOTICE** that failure to file a timely response may be
2 deemed as consent to the relief requested in the Motion. **SEE, LOCAL BANKRUPTCY**
3 **RULE 9013-1(h).**

4
5 Dated: October 30, 2009

Respectfully submitted,

6 **SHULMAN HODGES & BASTIAN LLP**

7
8 /s/ Mark Bradshaw

9 _____
Mark Bradshaw
Attorneys for the Debtor and Debtor in Possession
Culinary Adventures, Inc., a Delaware corporation
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II. SALE MOTION

In support of the Sale Motion, the Debtor respectfully represents as follows:

A. Background Regarding the Debtor's Business and Asset Disposition

The Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on August 14, 2008 ("Petition Date"). The Debtor is continuing in the operation and management of its business pursuant to Bankruptcy Code Sections 1107 and 1108.

On the Petition Date, the Debtor was based in Newport Beach, California and was owned 100% by Culinary Holdings, Inc. After the Petition Date, as part of cost-cutting measures that included laying off administrative staff, the Debtor relocated its headquarters to Santa Ana.

On the Petition Date, the Debtor owned four restaurants and was the managing member of four limited liability companies which collectively owned five additional restaurants – all located in Orange County and Los Angeles County as follows:

<u>Restaurant</u>	<u>Owned by an LLC or by Culinary Adventures, Inc.</u>
Wilhelm's Chophouse 13290 Jamboree Rd. Irvine, CA 92602	French 75 Marketplace, LLC, a Delaware limited liability company
French 75 Newport Beach 327 Newport Center Dr. Newport Beach, CA 92660	French 75 Newport Beach, LLC, a Delaware limited liability company (formerly known as Rouge Bistro LLC, a Delaware limited liability company)
French 75 Laguna Beach 1464 South Coast Hwy Laguna Beach, CA 9265	Culinary Adventures, Inc.
Savannah 3400 West Olive Ave. Burbank, CA 91505	French 75 LACO, LLC, a Delaware limited liability company
Savannah 10250 Santa Monica Blvd. Los Angeles, CA 90067 (Century City)	French 75 LACO, LLC, a Delaware limited liability company
Savannah Supper Club 655 Anton Blvd. Costa Mesa, CA 92626	Chat Noir LLC, a Delaware limited liability company
Savannah at the Beach 315 Pacific Coast Hwy Huntington Beach, CA 92648	Culinary Adventures, Inc.
Savannah Chop House 32441 Golden Lantern Laguna Niguel, CA 92677	Culinary Adventures, Inc.
Sorrento Grille 370 Glenneyre St. Laguna Beach, CA 92651	Culinary Adventures, Inc.

1 The Debtor directly employed all of the employees at all of the locations identified
2 above, including the non-debtor LLCs. The Debtor was supposed to receive a management fee
3 from the non-debtor LLCs but financial problems usually prevented that fee from being paid.
4 The Debtor was also the tenant or guarantor for each of the real property leases related to the
5 restaurants.

6 Substantially concurrent with the Petition Date, the Debtor closed Savannah Burbank,
7 Savannah Century City, and Wilhelm's Chophouse (in Irvine). Continuing losses at each of
8 these locations made the decision to close inevitable.

9 Also substantially concurrent with the Petition Date, the Debtor negotiated an eight-
10 month rent abatement with the landlord for the Savannah Supper Club (in Costa Mesa). That
11 rent abatement expired in March 2009 but ongoing losses and failed sale efforts forced that
12 location to close on March 31, 2009.

13 On September 26, 2008, the Debtor filed a motion to approve the sale of the assets,
14 business and properties utilized by the Debtor in the operation of the Debtor's restaurant known
15 as Sorrento Grille in Laguna Beach. That motion was granted, the sale closed, \$75,000 was paid
16 the Debtor's senior secured creditor, GE Capital Franchise Finance Corporation, a Delaware
17 corporation ("GE"), and the Debtor was relieved of any further obligations under the lease.

18 On February 12, 2009, the Court entered an order approving the sale of the French 75
19 Laguna Beach for a sale price of \$1.9 million to an entity owned by Kenneth A. Johnson. On
20 January 14, 2009, Mr. Johnson, as manager of F75 Laguna Beach, LLC, signed an asset purchase
21 agreement with the Debtor to acquire French 75 Laguna Beach. Pursuant to that agreement, Mr.
22 Johnson started operating the restaurant in early February 2009. During his time in possession
23 Mr. Johnson acted outside of his authority under the purchase agreement, severely damaged the
24 value of the Debtor's business and its assets, and then, among other things, breached the
25 purchase agreement. Mr. Johnson paid the initial \$250,000 deposit in connection with the
26 purchase but never paid the balance of the purchase price. On August 10, 2009, the Debtor filed
27 a motion to compel Mr. Johnson to close the sale transaction, but that motion was denied. Based
28 on Mr. Johnson's failure to purchase French 75 Laguna Beach, the Debtor regained possession of

1 the restaurant and started marketing it for sale in order to mitigate the damages caused by Mr.
2 Johnson. The Estate's claims against Mr. Johnson related to the failed sale transaction are not a
3 part of the Assets to be sold to the Buyer herein.

4 As a result of the transactions described above, the Debtor currently owns and operates
5 French 75 Laguna Beach, Savannah Chop House in Laguna Niguel, and Chimayo at the Beach in
6 Huntington Beach. This Sale Motion proposes to sell all three of these restaurants to the Buyer
7 on the terms set forth in the Purchase Agreement.

8 On January 16, 2009, the Debtor filed its original proposed Disclosure Statement
9 Describing Debtor's Chapter 11 Plan of Reorganization and its Chapter 11 Plan of
10 Reorganization. An Amended Chapter 11 Plan was prepared, circulated to parties in interest,
11 and contemplated a sale of the Assets generally similar to the provisions of this Sale Motion.
12 The Debtor determined that the delay and costs associated with the proposed chapter 11 plan
13 provided no additional benefit to the Estate and would prevent the Buyer from making the offer
14 described in the Purchase Agreement.

15 Pursuant to an Court order entered on June 24, 2009, the Debtor has not had exclusivity
16 to propose or confirm a chapter 11 plan, and thus any party in interest has been able to propose
17 an alternative plan for disposing of the Debtor's assets.

18 **B. Description of the Purchase Offer and Proposed Sale Transaction**

19 Subject to Court approval, the Debtor has received an offer from the Buyer for the
20 purchase of French 75 Laguna Beach, Savannah Chop House in Laguna Niguel, Chimayo at the
21 Beach in Huntington Beach, and each of their respective personal property assets, real property
22 leases, trade names, executory contracts, etc., as more fully described in the Purchase Agreement
23 (collectively, the "Assets").

24 For the sake of brevity, the Purchase Agreement is not fully described herein. However,
25 a copy of the letter of intent which will be used to prepare a formal Purchase Agreement is
26 attached to the Rourke Declaration as **Exhibit 1**. Once finalized, the Purchase Agreement will
27 be filed with the Court. Also, copies of the Purchase Agreement may be obtained by contacting
28 Debtor's counsel at the address indicated on the first page of this Sale Motion The principal

terms of the sale to be included in the Purchase Agreement are as follows:

1. The Buyer will purchase the assets, business and property utilized by the Debtor in the operation of the restaurants known as "French 75 Laguna Beach", "Savannah Chop House", and "Chimayo at the Beach".

2. The consideration for the purchase transaction will consist of \$2,400,000, or an amount as increased by overbid to be paid in immediately available funds at closing.

3. The Buyer shall provide an earnest money deposit of \$350,000.

4. The closing of the sale transaction will be no later than ten business days following entry of the order approving the Purchase Agreement.

5. No broker's fee will be offered or paid by the Debtor in connection with the sale transaction.

6. The Debtor and the Buyer shall each be responsible for half of any sales or transfer taxes due in connection with the sale for which an exemption is not available.

7. The Assets will be sold free and clear of any and all liens, claims, interests and encumbrances, including any claims for successor liability or WARN act violations. The Buyer will assume all of Debtor's rights and obligations arising after the closing under those contracts identified in the Purchase Agreement. The Debtor shall remain liable for all obligations arising under assumed contracts through the closing. The Buyer will not be liable for any of the debts, obligations or liabilities of the Debtor other than as assumed by Buyer under the Purchase Agreement.

8. The Assets will be sold free and clear of liens, claims, interests and encumbrances, including but not limited to any claims by the California State Board of Equalization and the Buyer shall acquire the Assets free and clear of any tax liabilities arising prior to the transfer of the Assets.

9. The existing liquor licenses for the businesses shall be transferred in accordance with the rules and regulations of the Department of Alcoholic Beverage Control.

10. Except as otherwise stated in the Purchase Agreement, the sale of the Assets will be on an as-is, where is basis, with no representations or warranties.

11. The terms and enforceability of the Purchase Agreement shall be subject to Bankruptcy Court approval of the Sale Motion, including the bidding procedures and good faith protections pursuant to Bankruptcy Code section 363.

12. To the extent necessary, Culinary Holdings, Inc. shall cooperate in the transfer of any intellectual property associated with the operation of the restaurants to Purchaser.

13. There shall be a pro-ration of expenses between Purchaser and Seller, including rent, or any other pre-paid liabilities. For example, if the sale closes in the middle of the month of December (as contemplated), and Debtor has paid rent for the three locations for the month of December, Purchaser will be required to reimburse Debtor for the rental expense, pro-rated based on the per diem cost of rent.

As noted herein, the proposed sale to the Buyer is subject to overbids in accordance with the Bidding Procedures. The Debtor has in the past considered and will consider offers for one,

two or all three of the restaurants and related assets. The Debtor explicitly encourages qualified bidders to submit offers even for less than all of the Assets. However, any offer for less than all of the Assets would have to provide a patently greater benefit to the Estate than the proposed sale to the Buyer. Any such offer will be considered by the Debtor and the Creditors' Committee in evaluating the Successful Bidder (discussed below).

C. Treatment of Liens

As noted above, the sale transaction will proceed such that the Assets will be sold free and clear of all liens, claims, interests and encumbrances. It is expressly understood and agreed that the Buyer will not be liable for any of the debts, obligations or liabilities of the Debtor of any kind other than those specifically assumed by the Buyer under the Purchase Agreement and that the Debtor shall remain liable and responsible for any all of its debts, obligations and liabilities not expressly assumed by the Buyer under the Purchase Agreement.

GE has a lien on substantially all of the Debtor's assets including certain personal property and furniture, fixtures and equipment associated with the three restaurants known as French 75 Laguna Beach, Savannah Chop House, and Chimayo at the Beach. GE is owed approximately \$1.08 million and will be paid in full from the sale proceeds. Credit Cash, LLC, a Delaware limited liability company ("Credit Cash") has a second priority lien on substantially the same assets as the lien held by GE. Although there is a dispute as to the amount owed to Credit Cash, the Debtor believes that the Credit Cash is owed no more than \$550,000, and after allowance of its claim will be paid in full from the sale proceeds.¹

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¹ The Debtor believes that the principal balance owed Credit Cash is approximately \$464,000 and that the payoff amount is no more than \$550,000 when reasonable attorneys' fees are included. Credit Cash asserts it is owed approximately \$600,000 when attorneys' fees are added to its claim. The Debtor and the Committee believe that Credit Cash's attorneys fees of approximately \$136,000 is excessive but believe that the dispute can be resolved without the need for litigation.

The Debtor anticipates that sale proceeds shall be used to pay GE, Credit Cash and other creditors generally as follows (subject in some cases to further order of the Court):²

<u>Creditor</u>	<u>Amount Due</u>	<u>Priority</u>
GE	\$ 1,080,000	First Priority
Credit Cash	\$ 550,000 (or the allowed claim amount)	Second Priority
L.A. Specialty (PACA claim)	\$ 80,000	Third Priority
Sysco (PACA claim)	\$ 3,156	Third Priority
Goldberg & Solovy Foods (reclamation claim)	\$ 37,388	Fourth Priority
Sysco (reclamation claim)	\$ 43,259	Fourth Priority
SulmeyerKupetz, APC Attorneys for the Committee	\$125,000	Fourth Priority
Shulman Hodges & Bastian LLP Attorneys for the Debtor	\$675,000	Fourth Priority
John E. Martin (Administrative claim for unpaid salary – five months at \$20,000 per month)	\$100,000	Fourth Priority
Rudy Pollak (Administrative claim for unpaid salary – twelve months at \$3,000 per month)	\$36,000	Fourth Priority
Pacific Restaurant Advisors, LLC (Post-petition Rejection Damages Claim)	\$37,500	Fourth Priority
TOTAL	\$2,767,303	

To the extent the sale proceeds are insufficient to pay creditors in Fourth Priority in full such creditors who hold allowed claims shall have such claims paid their pro rata share from available net sale proceeds after payment in full of senior priority claims.

Note regarding the Professional Fees. Allowance and payment of the professional fees and costs for SulmeyerKupetz, APC and Shulman Hodges & Bastian LLP will be subject to separate application(s) and Court order(s) pursuant to applicable provisions of the Bankruptcy Code.

² The Committee has advised that it does not consent to the payment of Credit Cash's claim absent a determination of the allowed amount of its secured claim. Further, the Committee is reserving its right to seek a determination of the allocation of the purchase price as between the assets subject to the secured creditors' collateral, and those assets that are not, namely, the leasehold interests. The Committee has further advised that it does not consent to the payment of claims of Mr. Martin, Pacific Restaurant Advisors, LLC and holders of reclamation claims absent further order of the Court.

1 **D. Other Offers Received for the Purchase of the Assets**

2 The Debtor has for several months initiated an internal process to sell the assets related to
3 its three remaining restaurants, French 75, Laguna Beach; Savannah Chop House, Laguna
4 Niguel, and Chimayo at the Beach, Huntington Beach, as a whole or as individual restaurants.

5 The Debtor had received an offer to purchase the same assets that are the subject of this
6 Sale Motion from a company to be formed by Debtor's Chief Executive Officer John E. Martin.
7 Such offer from Mr. Martin's company consisted of \$2,000,000 cash, an agreement by Mr.
8 Martin to subordinate his \$100,000 administrative claim for unpaid salary, his agreement to
9 subordinate his \$4.5 million general unsecured claim against the Debtor's Estate, and other
10 consideration.

11 The Debtor has also received some purchase inquiries from other potential buyers but no
12 other written offers.

13 **E. The Proposed Sale Serves the Best Interest of the Estate and its Creditors**

14 The Debtor has made a business decision that it is in the best interest of the creditors of
15 this Estate that the Sale Motion be approved. The sale provides substantial benefit to the Estate
16 and its creditors and is the best option available to the Debtor to maximize the value of its Assets
17 related to the three remaining restaurants.

18 The sale provides a meaningful benefit to the Estate and its creditors in that the proposed
19 sale disposes of substantially all of the Estate assets related to the three remaining operating
20 stores and generates the highest possible price through an arms' length sale, subject to overbid.

21 Although the Debtor made progress by cutting staff, closing unprofitable locations,
22 selling Sorrento Grille, relocating the corporate offices, and similar steps, the Debtors have
23 insufficient operating capital to run its three remaining locations— particularly after the harm
24 caused by Kenneth A. Johnson related to French 75 Laguna Beach. The Debtor is unwilling and
25 unable to operate without having the ability to pay for food, to pay employees, or to pay chapter
26 11 related administrative costs.

27 Therefore, the Debtor has for several months initiated an internal process to sell the
28 Assets as a whole or as individual restaurants. Several parties signed non-disclosure agreements

1 and engaged in due diligence in connection with the sale. The Debtor has provided packages of
2 information, has made the premises available for inspection, has made its staff available, and has
3 otherwise used its contacts in the community to market the Assets for sale and cooperate with
4 potential bidders. Despite these efforts, other than the offer from Mr. Martin, and the offer from
5 the Buyer that is the subject of this Sale Motion, none of those parties submitted a letter of intent
6 or purchase offer.

7 Moreover, as discussed herein the sale is subject to overbids and is being noticed on all
8 parties who have signed NDAs or otherwise expressed an interest in the Assets.

9 Notwithstanding the potential for overbids, unsecured creditors will only benefit from the
10 sale transaction after secured claims of approximately \$1.7 million, PACA claims of
11 approximately \$80,000, administrative claims of approximately \$950,000, and priority tax claims
12 of approximately \$700,000, are paid in full. Assuming there is no overbid activity, the final sale
13 price for the Assets will be sufficient to pay allowed secured creditors and allowed PACA
14 claimants in full, and to pay most but not all of the allowed administrative creditors.

15 The Debtor is seeking approval of the Sale Motion to protect several legitimate interests
16 under the Bankruptcy Code:

17 • The Debtor will maximize the value of the Assets by selling them to Buyer (or an
18 overbidder) as a going concern. The Debtor's estimate of the value of the Assets if sold as-is and
19 not part of a going concern is no more than \$300,000. Selling the Assets for \$2,400,000 or more
20 avoids economic waste and fulfills the Debtor's duties.

21 • The Debtor's proposed sale transaction will provide a financially viable tenant to
22 the Debtor's three landlords. The alternative would be to leave the landlords with three vacant
23 facilities in Laguna Beach, Laguna Niguel, and Huntington Beach and create three large
24 rejection damages claims that the Debtor cannot pay. Minimizing such claims is consistent with
25 the Debtor's duties.

26 • The Debtor's proposed sale transaction will preserve approximately 120 jobs,
27 which are certainly important to those that hold them. None of these jobs involves insiders of the
28 Debtor as defined by the Bankruptcy Code.

• The Debtor's proposed sale transaction will preserve a customer for the Debtor's
vendors and a tradition of dining excellence for the Debtor's patrons.

• The Debtor has funds to cover United States Trustee's fees in full.

1 Based on the additional information provided herein, the Debtor believes that it is
2 appropriate for the Court to approve the Sale Motion.

3 **III. NOTICE OF BIDDING PROCEDURES**

4 The Debtor has determined that it would benefit the Estate by permitting all interested
5 parties to receive information and bid the for the Assets to be sold to the Buyer instead of selling
6 such assets to the Buyer on an exclusive basis. Accordingly, in order to obtain the highest and
7 best offer for the benefit of the creditors of this estate, the Debtor is utilizing the following
8 bidding procedures ("Bidding Procedures") and requests that the Court order approving the sale
9 transaction also provide for approval of the Bidding Procedures:

10 1. Any potential overbidders for the Assets must provide the Debtor with a signed
11 Non-Disclosure Agreement in the form approved by the Debtor. The Debtor has already
12 provided the form NDA to several parties in interest, who have signed it and conducted due
13 diligence. Other parties interested in bidding may receive a copy of the Non-Disclosure
14 Agreement, a copy of the bidding procedures, and additional information by requesting these
15 from the Debtor's counsel.

16 2. The potential overbidders must bid an initial amount of at least \$125,000 over the
17 Purchase Price offered for the Assets by the Buyer (representing the Buyer's Break-Up fee of up
18 to \$75,000 and a minimum overbid increment of \$50,000). Minimum bid increments thereafter
19 shall be \$50,000.

20 3. Overbids must be in writing and be received by the Debtor, the Debtor's counsel,
21 Shulman Hodges & Bastian LLP to the attention of Mark Bradshaw, and counsel for the
22 Creditors' Committee to the attention of Mark Horoupian³ by no later than five days prior to the
23 hearing on the Sale Motion.

24
25
26
27 ³ Mr. Horoupian's address is Mark Horoupian/SulmeyerKupetz/333 South Hope Street, 35th Floor, Los
28 Angeles, CA 90071. Fax No. 213-629-4520/email: mhoroupian@sulmeyerlaw.com.

4. Overbids must be accompanied by a deposit ("Overbidder Deposit") in the form of Cash or a Cashier's Check made payable to "Shulman Hodges & Bastian LLP Client Trust Account" in the amount of \$350,000.

5. The overbidder must also provide evidence satisfactory to the Debtor and the Creditors' Committee of having sufficient specifically committed funds to complete the transaction or a lending commitment for the bid amount and such other documentation relevant to the bidder's ability to qualify as the purchaser of the Assets and ability to close the sale and immediately and unconditionally pay the winning bid purchase price at closing. Overbidder must also provide admissible evidence of its ability to provide adequate assurance of future performance under the leases to be assumed and assigned. Such information will be transmitted immediately to the counter-parties to the leases, and will remain subject to their objection.

6. The overbidder must seek to acquire the Assets on terms and conditions not less favorable to the Debtor than the terms and conditions to which the Buyer has agreed to purchase the Assets, including but not limited to completing any due diligence by the same deadline as imposed on the Buyer and closing on the sale of the Assets will be completed in the same time parameters as the Buyer. In addition, the overbidder must make payment of the Purchase Price in the same manner as the Buyer has agreed to do by the terms of this Agreement.

7. If overbids are received, the final bidding round for the Assets shall be held no later than two business days prior to the hearing on the Sale Motion in order to allow all potential bidders the opportunity to overbid for the purchase of the Assets. If overbids are received, the Debtor will give notice to the (i) the Buyer, (ii) any qualified overbidders and the (iii) the Committee and its counsel, of the date and time of the final bidding round, which will be held at the Debtor's counsel office, Shulman Hodges & Bastian LLP, or such other location as may be determined.

8. At the hearing on the Sale Motion, the Debtor will seek entry of an order, inter alia, authorizing and approving the sale of the Assets to the bidder who the Debtor, in the exercise of its business judgment and after consultation with the Creditors' Committee, may determine to have made the highest and best offer to purchase the Assets, consistent with the

Bidding Procedures (“Successful Bidder”). The Debtor shall consult with the Committee and its counsel as to the determination of the Successful Bidder.

9. In the event Successful Bidder fails to close on the sale of the Assets within the time parameters approved by the Court, the Debtor shall retain the Successful Bidder’s Deposit and will be released from its obligation to sell the Assets to the Successful Bidder and the Debtor may then sell the Assets to the first back-up bidder approved by the Court at the hearing on the Sale Motion (“First Back-Up Bidder”).

10. In the event First Back-Up Bidder fails to close on the sale of the Assets within the time parameters approved by the Court, the Debtor shall retain the First Back-Up Bidder’s Deposit and will be released from its obligation to sell the Assets to the First Back-Up Bidder and the Debtor may then sell the Assets to the second back-up bidder approved by the Court at the hearing on the Sale Motion (“Second Back-Up Bidder”).

11. Pursuant to the terms of the Purchase Agreement with the Buyer, in the event that an overbidder (and not the Buyer) is the Successful Bidder for the purchase of the Assets, the Debtor requests authorization to pay the Buyer’s fees and costs associated with the sale of the Assets in an amount of the Purchaser’s actual fees and expenses, but in no event shall the amount exceed \$75,000. The Break-Up Fee will only be payable in the event that that the sale of the Assets closes to an overbidder that is not the Buyer. The Buyer shall be allowed to credit bid the Break-Up Fee in any overbids that Buyer may elect to make with respect the Assets

IV. AUTHORITIES

A. Court May Approve a Sale When There is a Good Faith Purchaser

Pursuant to Bankruptcy Code Section 541, upon the commencement of a case under Chapter 11, an estate is created which includes all legal and equitable interest of the debtor in property at the commencement of the case. The Debtor, after notice and hearing, may sell property of the Estate. Bankruptcy Code Section 363(b). The standards to establish are that there is a sound business purpose for the sale, that the sale is in the best interests of the estate, i.e., the sale is for a fair and reasonable price, that there is accurate and reasonable notice to creditors and that the sale is made in good faith. In re Wilde Horse Enterprises, Inc., 136 B.R.

1 830, 841 (Bankr. C.D. Cal. 1991); In re Lionel Corp., 722 F.2d 1063, 1069 (2d Cir. 1983).
2 Business justification would include the need to close a sale to one of very few serious bidders
3 where an asset has been extensively shopped and a delay could jeopardize the transaction. See,
4 e.g., In re Crowthers McCall Pattner, Inc., 114 B.R. 877, 885 (Bankr. S.D.N.Y. 1990) (extreme
5 difficulty finding a buyer justified merger when buyer found). The Debtor's proposed sale
6 meets the foregoing criteria.

7 **1. Sound Business Purpose**

8 There must be some articulated business purpose for a proposed sale outside the ordinary
9 course of business. Walter v. Sunwest Bank (In re Walter), 83 B.R. 14, 19-20 (B.A.P. 9th Cir.
10 1988). The standards for whether a sale is supported by a sound business purpose was set forth
11 in In re Institutional Creditors of Continental Airlines, Inc. v. Continental Airlines, Inc. (In re
12 Continental Airlines, Inc.), 780 F.2d 1223, 1226 (5th Cir. 1986), wherein the Fifth Circuit
13 stated:

14 Whether the proffered business justification is sufficient depends
15 on the case. As the second Circuit held in Lionel, the bankruptcy
16 judge should consider all salient factors pertaining to the
17 proceeding and, accordingly, act to further the diverse interest of
18 the debtor, creditors and equity holders, alike. He might, for
19 example, look to such relevant factors as the proportionate value of
20 the asset to the estate as a whole, the amount of elapsed time since
21 the filing, the likelihood that a plan of reorganization will be
22 proposed and confirmed in the near future, the effect of the
23 proposed disposition on future plans of reorganization, the
24 proceeds to be obtained from the disposition vis-a-vis any
25 appraisals of the property, which of the alternatives use, sale or
26 lease proposal envisions and, most importantly perhaps, whether
27 the assets is increasing or decreasing in value. This list is not
28 intended to be exclusive, but merely to provide guidance to the
bankruptcy judge.

23 Id., citing Lionel Corp. 722 F.2d at 1071.

24 The standards set forth in Continental Airlines were adopted by the Ninth Circuit
25 Bankruptcy Appellate Panel. Walter 83 B.R. at 19-20.

26 Here, the facts surrounding the sale support the Debtor's business decision that the
27 proposed sale is in the best interests of the Estate and its creditors. The sale provides a
28 meaningful benefit to the Estate and its creditors. The ongoing expenses of operating the

Debtor's three locations includes food, alcohol, labor, rent, insurance and together with the current economic conditions dictate a sale of the business rather than continued operation. The Debtor believes that the Buyer is financially sound and that the proposed purchase price is fair such that the Estate will be better served by a sale of this store than it would be keeping it open and conducting business.

2. The Sale Serves the Best Interests of the Estate and Creditors

The Debtor believes that it would be in the best interests of the Estate and its creditors to sign the Purchase Agreement and transfer the assets to the Buyer. If the sale is approved, the Debtor will generate cash and stop the administrative burden of the chapter 11 case. Moreover, given the current economy there is no assurance that the Debtor will be able to continue to operate the restaurants profitably. The sale provides certainty and substantial cash for the Estate and its creditors. As such, through this Sale Motion, the Debtor will preserve a benefit for creditors which may be diminished if the Sale Motion is not granted. Thus, the Debtor has made a business decision that it is in the best interest of the creditors of this Estate that this Sale Motion be approved.

3. Accurate and Reasonable Notice

It is expected that under the circumstances of this case, notice of this Sale Motion will satisfy the requirements for accurate and reasonable notice and will be appropriate under the circumstances of this case. The notice requirements for sales outside the ordinary course are set forth in Federal Rules of Bankruptcy Procedure ("FRBP") 6004 and 2002. The notice must include the time and place of any public sale, the terms and conditions of any private sale, the time fixed for filing on objections and a general description of the property. Fed. R. Bankr. P. 2002(c)(1).

The Debtor shall provide notice of the proposed sale to creditors in the manner prescribed by Orders of this Court. This Sale Motion which will be served as directed by Orders of this Court includes a summary of the terms and conditions of the proposed sale and a general description of the assets to be sold. As directed by Orders of this Court, the Debtor will provide notice of hearing on the Sale Motion to creditors and the time fixed for filing objections. The

Debtor is also providing notice to all parties that have expressed an interest in some or all of the Assets. The Debtor is also advertising the sale opportunity in various publications. The Debtor submits that the notice requirements will have been satisfied, thereby creditors and parties in interest an opportunity to object to the sale. Hence, no further notice should be necessary.

4. The Sale is Made In Good Faith

The proposed sale will be brought in good faith and will be negotiated on an "arms length" basis. The court, in Wilde Horse Enterprises, set forth the factors in considering whether a transaction is in good faith. The court stated:

'Good faith' encompasses fair value, and further speaks to the integrity of the transaction. Typical 'bad faith' or misconduct, would include collusion between the seller and buyer, or any attempt to take unfair advantage of other potential purchasers. . . . And, with respect to making such determinations, the court and creditors must be provided with sufficient information to allow them to take a position on the proposed sale. (citations omitted)

Id. at 842.

In the present case, the negotiation of the proposed sale will be an arms-length transaction. The negotiations with the Buyer is anticipated to result in an offer to sell the that will have benefit to the Estate. As set forth in the Notice of the Sale Motion and the Sale Motion, the creditors will have been provided with sufficient notice of the sale. Accordingly, the sale is in good faith and should be approved. The Debtor requests such a finding pursuant to Bankruptcy Code Section 363(m).

B. The Sale Does Not Contravene Policy

As early as 1981, a court held that:

As to whether the sale by a trustee of all of the debtor's assets must take place in the context of a confirmed reorganization plan, the case law again is clear that there is nothing objectionable about a sale of all the assets outside of a Chapter 11 plan.

In re WHET, Inc., 12 B.R. 743, 750 (Bankr. D. Mass. 1981).

As a result of its financial condition, the Debtor believes the best option is the orderly sale of its interests in the Assets based on the beneficial offer received. In essence, based on good business reasons, including the economics of the Debtor's situation, it is in the best interest

of the creditors of this Estate that this Sale Motion be approved. Accordingly, the sale does not conflict with underlying bankruptcy policy. See, In re Brethren Care of South Bend, Inc., 98 B.R. 927, 934 (Bankr. N.D. Ind. 1989) (certainty of future for tenants was good business reason and only feasible plan was liquidation, so sale approved despite pending plan of reorganization).

C. The Proposed Sale Should be Allowed Free and Clear of Liens

Bankruptcy Code Section 363(f) allows a debtor to sell property of the bankruptcy estate "free and clear of any interest in such property of an entity," if any one of the following five conditions is met:

1. applicable non-bankruptcy law permits a sale of such property free and clear of such interest;
2. such entity consents;
3. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
4. such interest is in bona fide dispute;
5. or such entity could be compelled, in a legal or equitable proceeding, to accept money satisfaction of such interest.

Bankruptcy Code Section 363(f).

Section 363(f) is written in the disjunctive and thus only one of the enumerated conditions needs to be satisfied for Court approval to be appropriate. Here, the Debtor seeks to sell the Assets free and clear of liens and encumbrances. From and after the closing of the transaction, the Buyer will assume all of Debtor's rights and obligations arising after the closing under those contracts (and only those contracts) listed in Purchase Agreement; provided that Buyer will not be obligated to assume any such contract for which assignment to the Buyer requires the consent of the other party to such contract unless such consent has been obtained in writing and delivered to Buyer on or before the closing of the transaction. The Debtor shall remain liable for all obligations arising under such contracts through the closing. It is expressly understood and agreed that Buyer will not be liable for any of the debts, obligations or liabilities of Debtor of any kind other than those specifically assumed by Buyer under the Purchase

1 Agreement and that Debtor shall remain liable and responsible for any all of its debts, obligations
2 and liabilities not expressly assumed by Buyer under the Purchase Agreement.

3 Although there is a dispute as to the amount owed to Credit Cash, the Debtor believes
4 that the Credit Cash is owed no more than \$550,000, and after allowance of its claims will be
5 paid in full from the sale proceeds. The Debtor believes that the principal balance owed Credit
6 Cash is approximately \$464,000 and that the payoff amount is no more than \$550,000. Credit
7 Cash asserts it is owed approximately \$600,000 when attorneys' fees are added to its claim. The
8 Debtor and the Committee believe that Credit Cash's attorneys fees of approximately \$136,000
9 is excessive but believe that the dispute can be resolved without the need for litigation.

10 The Debtor is proposing to sell the Assets for more than the amount of the liens against it.
11 Both GE and Credit Cash shall be paid the full amount of their allowed secured claims as
12 described above.⁴ As such, approval of this Sale Motion pursuant to 363(f) is proper. Based on
13 the terms of the sale, the Debtor contemplates that no secured parties will object to the sale. As
14 such, the Debtor seeks to sell the Assets pursuant to Bankruptcy Code Section 363(f)(2) and
15 (f)(3).

16 **D. Assumption and Assignment of Executory Contracts and Leases Should Be**

17 **Authorized**

18 Bankruptcy Code Section 365(a) provides that:

19 " . . . the trustee, subject to the court's approval, may assume or
20 reject any executory contract or unexpired lease of the debtor."

21 The Debtor seeks Court authority to assume and assign the contracts listed in the
22 Purchase Agreement that are included in the sale as consideration for the purchase price to be
23 paid by the Buyer to the Estate.

24 **1. Assumption and Assignment Is a Proper Exercise of Debtor's Business**

25 **Judgment**

26 A trustee satisfies the "business judgment" test when the trustee decides, in good faith,
27 that assumption or rejection may benefit the estate and its creditors, and may preserve assets for

28 ⁴ As stated above, the Committee reserves its rights as to this issue.

1 the estate. See, Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific R.R.
2 Company, 318 U.S. 523, 550, 63 S. Ct. 727, 742-43 (1943); In re Huang, 23 B.R. 798, 900
3 (B.A.P. 9th Cir. 1982); In re FCX, Inc., 60 B.R. 405, 441 (Bankr. E.D.N.C. 1986).

4 In the present case, the Debtor has exercised sound business judgment on behalf of the
5 Estate in electing to assume and assign contracts that are ultimately included in the sale. It is
6 anticipated that the Buyer will intend to honor the contracts relating to the assets ultimately
7 included in the sale pursuant to the same terms and conditions as entered into by the Debtor. The
8 Buyer must have legal authority to enforce performance under such executory contracts and
9 leases. Likewise, the other parties to the contracts listed on Schedules attached to the Purchase
10 Agreement must have a basis for seeking the Buyer's performance.

11 Given that the Buyer is an experienced restaurant operator in Orange County and has
12 ample financial resources, the Debtor does not anticipate any opposition from landlords to this
13 Sale Motion. The Debtor's three real property leases are current and the Debtor does not
14 anticipate any cure payment coming due in connection with the proposed sale transaction.

15 The Debtor is on a month-to-month lease for a storage unit in Santa Ana, which lease the
16 Debtor intends to terminate and if necessary, reject by separate motion.

17 The Debtor is a party to two prepetition leases with Manifest Funding. One is the
18 Debtor's point of sale system, which is a 60-month lease with a lease date of December 2, 2003,
19 and payments of \$870.69 per month. To the extent it has not yet expired, such lease may be
20 assumed and assigned to the Buyer. The second is a lease for restaurant equipment, which is a
21 48-month lease with a lease date of November 19, 2007, and payments of \$2,380 per month.

22 The Debtor is also a party to a lease with Cell Business Equipment for a RICO copier
23 and related supplies. This is a 36-month lease with monthly payments of \$345.

24 Except for its restaurant equipment lease with Manifest Funding, the Debtor is current on
25 its payments on the above leases and contracts.

26 To the extent necessary, the Debtor shall enter into stipulations for assumption and
27 assignment that will cover the cure of all payment defaults of the leases and contracts included in
28 the sale so that such leases and contracts may be assumed and assigned to the Buyer.

Accordingly, the Debtor requests that the Court approve assumption and assignment of the leases and contracts identified in the Purchase Agreement.

E. The Court Has Authority to Approve the Bidding Procedures

Implementation of the Bidding Procedures is an action outside of the ordinary course of the business. Bankruptcy Code Section 363(b)(1) provides that a trustee “after notice and hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” Furthermore, under Bankruptcy Code Section 105(a), “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Thus, pursuant to Bankruptcy Code Sections 363(b)(1) and 105(a), this Court may authorize the implementation of Bidding Procedures.

The Ninth Circuit, in a case under the Bankruptcy Act, recognized the power of a bankruptcy court to issue orders determining the terms and conditions for overbids with respect to a sale of estate assets. In re Crown Corporation, 679 F.2d 774 (9th Cir. 1982). The Crown Corporation court entered an order specifying the minimum consideration required for an overbid as well as the particular contractual terms required to be offered by overbidders. Id. at 777. The Crown Corporation decision also approves an order requiring and setting the amount of potential overbidder’s deposits and authorized courts to determine the disposition of such deposits. Id. While the discussion is not extensive, the Crown Corporation decision recognizes the authority of bankruptcy courts to order the implementation of bidding procedures such as those proposed in the present case.

1. The Bidding Procedures are Untainted by Self-Dealing

The Bidding Procedures have been brought in good faith and have been negotiated on an “arms length” basis. Therefore, there is no prospective taint in dealings between the Debtor and any potential bidders.

2. The Bidding Procedures Encourage Bidding

The Bidding Procedures are designed to encourage, not hamper bidding and are reasonable under the circumstances. The Bidding Procedures are intended to provide potential

1 overbidders with adequate information to make an informed decision as to the amount of their
2 bid and the validity of their bid.

3 **3. The Bidding Procedures Serve the Best Interests of the Estate**

4 The proposed Bidding Procedures serve the estate in several ways. First, the procedures
5 themselves are fair, reasonable and productive; they will permit the Debtor to conduct an orderly
6 sale and obtain the best possible price on the best possible terms.

7 The Bidding Procedures will ensure that all bids will be comparable. The Debtor will
8 determine which bid is the highest and best for the Estate. The comparability requirement of the
9 Bidding Procedures will make it possible to accomplish this task.

10 The Bidding Procedures will help the Debtor to obtain the highest and best possible price
11 for the Assets. The Bidding Procedures applies minimum overbid increments which the Debtor
12 believes are reasonable. Thus, the Debtor will be able to obtain substantial benefit for this Estate
13 from the sale from competing bids.

14 The Bidding Procedures require that potential bidders demonstrate their capacity to
15 complete the transaction. It would be a serious loss to the Estate if it surrendered the opportunity
16 to sell the Assets to one buyer in favor of a competing bidder only to discover the Successful
17 Bidder incapable of consummating the transaction. Thus, requiring bidders to qualify as bidders
18 will protect the Estate from such a loss.

19 The most important benefit of the Bidding Procedures to the Estate is that their
20 implementation will enable the consummation of the proposed sale. The proposed sale will be
21 best way to obtain the maximum and most expedient recovery for creditors of this Estate.
22 Implementation of the Bidding Procedures is an essential component of consummating the sale
23 of the Assets and maximizing the value of the such assets for the Estate and creditors.

24 The Bidding Procedures utilized by the Debtor are fair and provide for a “level playing
25 field” for all prospective bidders with respect to the proposed sale. The Bidding Procedures
26 establish a reasonable but expeditious timeline for allowing the Debtor to give notice of the
27 proposed sale and qualified bidders to conduct reasonable due diligence and submit competing
28 offers, thereby potentially generating additional value for the Assets. Furthermore, the notice of

the Bidding Procedures and Sale Motion is designed to attract the most interest in the acquisition of the Assets and is sufficient under the circumstances of this case. Thus, approval of the Bidding Procedures would serve the best interests of the Estate and its creditors.

F. The Break-Up Fee is Reasonable

As stated by the court in In re Financial News Network, 126 B.R. 152 (D.C., S.D.N.Y. 1991) at 154, "A break_up fee is an incentive payment to an unsuccessful bidder who placed the estate property in a sales configuration mode . . . to attract other bidders to the auction." In addition, as stated by the District Court in In re Integrated Resources, Inc., 147 B.R. 650, at 659-661 (D.C., S.D.N.Y. 1992).

Break-up fees are important tools to encourage bidding and to maximize the value of the debtor's assets. The usual rule is that if break-up fees encourage bidding, they are enforceable; if they stifle bidding they are not enforceable. In fact, because the directors of a corporation have a duty to encourage bidding, break-up fees can be necessary to discharge the director's duties to maximize value.

CRTF Corp. v. Federated Department Stores, Inc., 683 F.Supp. at 441.

"Outside bankruptcy, the business judgment rule normally applies to the board's use of a defensive strategy, such as a break-up fee. . . In assessing the incentive effect of the break-up fee, a court should determine whether the dollar amount of the fee is so substantial that it has a chilling affect on other prospective bidders. In making this determination, the court should consider whether the proposed acquiror attracted other bidders or simply received a potential windfall. Break-up fees and other strategies may be legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking . . .

"A break_up fee should constitute a fair and reasonable percentage of the proposed purchase price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser. When reasonable in relation to the bidder's efforts and to the magnitude of the transaction, break_up fees are generally permissible In re 999 Fifth Avenue Assocs., 96 B.R. at 29.

In this case, the Debtor readily acknowledges that a significant amount of time, effort and expense will have been incurred by the Buyer in performing its due diligence and negotiating the terms of the sale of Assets. In a transaction wherein the first overbid increment is anticipated to be at least \$2,525,000 (Buyer's purchase price of \$2,400,000 plus initial overbid of \$125,000=

1 \$2,525,000), it is anticipated that the Break-Up Fee of up to \$75,000 represents less than three
2 percent of the purchase price. More importantly, the Break-Up fee is only payable in the event
3 that there is a successful overbid. To the extent that competitive bidding increased the final sales
4 price and a sale takes place beyond that amount, the "net" to the creditors of the Estate would rise
5 dollar for dollar with every increment above the Buyer's offer and the Break-Up Fee would
6 remain constant at \$75,000.

7 The Court should note that the Break-Up Fee is only payable in the event that the sale
8 closes and the Buyer is not the Successful Bidder, thereby distinguishing these facts from those
9 presented in In re Hup Industries, Inc., 140 B.R. 191 (Bankr. N.D. Ohio 1992), wherein the court
10 did not approve the break-up fee arrangement when the party proposed to receive the break-up
11 fee was to receive the same regardless of the outcome of the proposed sale in the event
12 overbidding took place. Thus, the Debtor requests the Court approve the Break-Up fee proposed
13 to be paid to the Buyer in the event the sale closes and the Buyer is not the Successful Bidder and
14 purchaser of the Assets.

15 **G. The Court has Authority to Waive the Ten-Day Stay of Sale**

16 Federal Rule of Bankruptcy Procedure 6004(h) provides that "[a]n order authorizing the
17 use, sale or lease of property other than cash collateral is stayed until the expiration of 10 days
18 after entry of the order, unless the court orders otherwise."

19 Federal Rule of Bankruptcy Procedure 6006(d) provides that "[a]n order authorizing the
20 trustee to assign an executory contract or unexpired lease under §365(f) is stayed until the
21 expiration of 10 days after entry of the order, unless the court orders otherwise."

22 The Debtor desires to close the sale transaction as soon as practicable after entry of an
23 order approving the sale. Accordingly, the Debtor requests that the Court in the discretion
24 provided it under Federal Rules of Bankruptcy Procedure 6004(h) and 6006(d), waive the ten-
25 day of the order approving the sale transaction proposed herein.

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V. **CONCLUSION**

WHEREFORE, based upon the foregoing, the Debtor respectfully submits that good cause exists for granting the Sale Motion and requests that the Court enters an order as follows:

1. Approving the Bidding Procedures utilized by the Debtor in connection with the sale proposed sale of the Assets, including payment of the Break-Up Fee in the event that the sale of the Assets closes and the Buyer is not the purchaser of the Assets.

2. Authorizing the Debtor to sell the Assets to the Buyer pursuant to the terms and conditions as set forth in the letter of intent attached as **Exhibit 1** to the Rourke Declaration, which will be used to prepare a formal Purchase Agreement.

3. Authorizing the sale of the Assets to the Buyer free and clear of any and all liens, claims, interests and encumbrances, including any claims for successor liability or WARN act violations.

4. Authorizing the sale to proceed free and clear of liens, claims, interests and encumbrances, including but not limited to any claims by the Internal Revenue Service, the California Franchise Tax Board, the California Employment Development Department and the California State Board of Equalization and authorizing the Buyer to acquire the Assets free and clear of any tax liabilities arising prior to the transfer of the Assets.

5. Approving the assumption and assignment of the leases and and/or executory contracts included in the sale as identified in the Purchase Agreement.

6. The order provide for a determination by the Court that the Buyer is in good faith pursuant to Bankruptcy Code Section 363(m).

7. Authorizing the Debtor to sign any and all documents convenient and necessary in pursuit of the sale as set forth above, including but not limited to any and all conveyances contemplated by the sale and the Purchase Agreement.

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1 8. Waiving the ten day stay of order approving the Sale Motion under Federal Rules
2 of Bankruptcy Procedure 6004(h) and 6006(d).

3 9. And for such other and further relief as is just.

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5 Dated: October 30, 2009

Respectfully submitted,

SHULMAN HODGES & BASTIAN LLP

6
7 /s/ Mark Bradshaw

8 Mark Bradshaw
9 Attorneys for the Debtor and Debtor in Possession
10 Culinary Adventures, Inc., a Delaware corporation
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DECLARATION OF ROBERT ROURKE

I, Robert Rourke, declare:

1. I am the Chief Financial Officer of Culinary Adventures Incorporated, a Delaware corporation, the debtor and debtor-in-possession herein (“Debtor”). I have personal knowledge of the facts set forth herein and could, if called as a witness, competently testify thereto. I am also personally familiar with, and am custodian of, the records of the Debtor as they pertain to the financial records set forth herein.

2. I make this Declaration in support of the Debtor’s Motion for Order: (1) Approving the Sale of Substantially All of the Debtor’s Assets; (2) Approving Assumption and Assignment of Leases and Executory Contracts Related to the Sale; and (3) Approving Bidding Procedures (“Sale Motion”). Unless otherwise noted, capitalized terms herein have the meanings as set forth in the Sale Motion.

3. The Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on August 14, 2008 (“Petition Date”). The Debtor is continuing in the operation and management of its business pursuant to Bankruptcy Code Sections 1107 and 1108.

4. On the Petition Date, the Debtor was based in Newport Beach, California and was owned 100% by Culinary Holdings, Inc. After the Petition Date, as part of cost-cutting measures that included laying off administrative staff, the Debtor relocated its headquarters to Santa Ana.

5. On the Petition Date, the Debtor owned four restaurants and was the managing member of four limited liability companies which collectively owned five additional restaurants – all located in Orange County and Los Angeles County as follows:

<u>Restaurant</u>	<u>Owned by an LLC or by Culinary Adventures, Inc.</u>
Wilhelm’s Chophouse 13290 Jamboree Rd. Irvine, CA 92602	French 75 Marketplace, LLC, a Delaware limited liability company
French 75 Newport Beach 327 Newport Center Dr. Newport Beach, CA 92660	French 75 Newport Beach, LLC, a Delaware limited liability company (formerly known as Rouge Bistro LLC, a Delaware limited liability company)

<u>Restaurant</u>	<u>Owned by an LLC or by Culinary Adventures, Inc.</u>
French 75 Laguna Beach 1464 South Coast Hwy Laguna Beach, CA 9265	Culinary Adventures, Inc.
Savannah 3400 West Olive Ave. Burbank, CA 91505	French 75 LACO, LLC, a Delaware limited liability company
Savannah 10250 Santa Monica Blvd. Los Angeles, CA 90067 (Century City)	French 75 LACO, LLC, a Delaware limited liability company
Savannah Supper Club 655 Anton Blvd. Costa Mesa, CA 92626	Chat Noir LLC, a Delaware limited liability company
Savannah at the Beach 315 Pacific Coast Hwy Huntington Beach, CA 92648	Culinary Adventures, Inc.
Savannah Chop House 32441 Golden Lantern Laguna Niguel, CA 92677	Culinary Adventures, Inc.
Sorrento Grille 370 Glenneyre St. Laguna Beach, CA 92651	Culinary Adventures, Inc.

6. The Debtor directly employed all of the employees at all of the locations identified above, including the non-debtor LLCs. The Debtor was supposed to receive a management fee from the non-debtor LLCs but financial problems usually prevented that fee from being paid. The Debtor was also the tenant or guarantor for each of the real property leases related to the restaurants.

7. Substantially concurrent with the Petition Date, the Debtor closed Savannah Burbank, Savannah Century City, and Wilhelm's Chophouse (in Irvine). Continuing losses at each of these locations made the decision to close inevitable.

8. Also substantially concurrent with the Petition Date, the Debtor negotiated an eight-month rent abatement with the landlord for the Savannah Supper Club (in Costa Mesa). That rent abatement expired in March 2009 but ongoing losses and failed sale efforts forced that location to close on March 31, 2009.

9. On September 26, 2008, the Debtor filed a motion to approve the sale of the assets, business and properties utilized by the Debtor in the operation of the Debtor's restaurant known as Sorrento Grille in Laguna Beach. That motion was granted, the sale closed, \$75,000

1 was paid the Debtor's senior secured creditor, GE Capital Franchise Finance Corporation, a
2 Delaware corporation ("GE"), and the Debtor was relieved of any further obligations under the
3 lease.

4 10. On February 12, 2009, the Court entered an order approving the sale of the French
5 75 Laguna Beach for a sale price of \$1.9 million to an entity owned by Kenneth A. Johnson. On
6 January 14, 2009, Mr. Johnson, as manager of F75 Laguna Beach, LLC, signed an asset purchase
7 agreement with the Debtor to acquire French 75 Laguna Beach. Pursuant to that agreement, Mr.
8 Johnson started operating the restaurant in early February 2009. During his time in possession
9 Mr. Johnson acted outside of his authority under the purchase agreement, severely damaged the
10 value of the Debtor's business and its assets, and then, among other things, breached the
11 purchase agreement. Mr. Johnson paid the initial \$250,000 deposit in connection with the
12 purchase but never paid the balance of the purchase price. On August 10, 2009, the Debtor filed
13 a motion to compel Mr. Johnson to close the sale transaction, but that motion was denied. Based
14 on Mr. Johnson's failure to purchase French 75 Laguna Beach, the Debtor regained possession of
15 the restaurant and started marketing it for sale in order to mitigate the damages caused by Mr.
16 Johnson.

17 11. As a result of the transactions described above, the Debtor currently owns and
18 operates French 75 Laguna Beach, Savannah Chop House in Laguna Niguel, and Chimayo at the
19 Beach in Huntington Beach. This Sale Motion proposes to sell all three of these restaurants to
20 Buyer on the terms set forth in the Purchase Agreement.

21 12. On January 16, 2009, the Debtor filed its original proposed Disclosure Statement
22 Describing Debtor's Chapter 11 Plan of Reorganization and its Chapter 11 Plan of
23 Reorganization. An Amended Chapter 11 Plan was prepared, circulated to parties in interest,
24 and contemplated a sale of the Assets generally similar to the provisions of this Sale Motion.
25 The Debtor determined that the delay and costs associated with the proposed chapter 11 plan
26 provided no additional benefit to the estate and would prevent the Buyer from making the offer
27 described in the Purchase Agreement.

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1 13. Pursuant to an Court order entered on June 24, 2009, the Debtor has not had
2 exclusivity to propose or confirm a chapter 11 plan, and thus any party in interest has been able
3 to propose an alternative plan for disposing of the Debtor's assets.

4 14. The Debtor has received an offer from the Buyer for the purchase of French 75
5 Laguna Beach, Savannah Chop House in Laguna Niguel, Chimayo at the Beach in Huntington
6 Beach, and each of their respective personal property assets, real property leases, trade names,
7 executory contracts, etc., as more fully described in the Purchase Agreement (collectively the
8 "Assets"). A true and correct copy of the letter of intent which will be used to prepare a formal
9 Purchase Agreement is attached hereto as **Exhibit 1**. Once finalized, the Purchase Agreement
10 will be filed with the Court.

11 15. The Debtor does not believe that unsecured creditors will directly benefit from the
12 sale transaction. That became the reality when the Debtor was discussing potential bids with
13 parties who expressed an interest in the Assets. Assuming there is no overbid activity, the final
14 sale price for the Assets will be sufficient to pay allowed secured creditors and allowed PACA
15 claimants in full, and to pay most but not all of the allowed administrative creditors.

16 16. The Debtor has for several months initiated an internal process to sell the assets
17 related to its three remaining restaurants, French 75, Laguna Beach; Savannah Chop House,
18 Laguna Niguel, and Chimayo at the Beach, Huntington Beach, as a whole or as individual
19 restaurants. The Debtor had received an offer to purchase the same assets that are the subject of
20 the Sale Motion from a company to be formed by Debtor's Chief Executive Officer John E.
21 Martin. Briefly, such offer from Mr. Martin's company consisted of \$2,000,000 cash and an
22 agreement by Mr. Martin to subordinate his \$100,000 administrative claim, and his agreement to
23 subordinate his \$4.5 million general unsecured claim against the Debtor's Estate.

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1 17. The Debtor has also received some interest/inquiries from other potential buyers
2 but no other written offers. At this time, the Buyer's offer is the only actual written offer
3 received other than from Mr. Martin's company to be formed. However, in order to capitalize on
4 the interest, the Sale Motion which includes the Bidding Procedures, will be provided to each of
5 the parties who have expressed an interest in the purchase of the Debtor's remaining three
6 restaurants to be sold.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

9 Executed at Santa Ana, California on October 29, 2009.

Robert Rourke

EXHIBIT 1

October 27, 2009

John Martin
Chairman and CEO
Culinary Adventures, Inc.
567 San Nicolas Drive, Suite 400
Newport Beach, CA 92660

RE: Bid for the Assets of Savannah at the Beach located at 315 Pacific Coast Highway, Huntington Beach, CA, Savannah Chop House located at 32441 Golden Lantern, Laguna Niguel, CA and French 75 located at 1464 Pacific Coast Hwy, Laguna Beach, CA.

Dear Mr. Martin:

On behalf of Levon Gugasian or his nominee ("Purchaser"), I am pleased to present to you this revised binding Letter of Intent ("LOI") to purchase from Culinary Adventures, Inc., debtor and debtor in possession ("Seller"), substantially all assets of and leasehold interests relate to Culinary Adventures doing business as Chimayo at the Beach located in Huntington Beach, California, Savannah Chop House located in Laguna Niguel, California and French 75 located in Laguna Beach, CA, under the terms outlined below. An original letter of intent (the "Original LOI") was transmitted to you on October 22, 2009. I understand that you conveyed certain issues that you spotted in the Original LOI to counsel for the Creditors Committee. These amendments are intended to address those comments.

We understand the Seller is currently a debtor in possession in bankruptcy under chapter 11 of the United States Bankruptcy Code Case No. 8:08-14877 ES (the "Bankruptcy Case"), presently pending before the U.S. Bankruptcy Court for the Central District of California (the "Bankruptcy Court"). The sale of the Purchased Assets shall be free and clear of all liens, claims, encumbrances and interests. Except as authorized for payment hereby, each such lien, claim, encumbrance or interest shall attach, as adequate protection to the holder thereof pursuant to 11 U.S.C. § 363, to the net proceeds of sale.

This LOI is binding on the parties, but is subject to the parties entering into a binding Asset Purchase Agreement by and between Purchaser, Seller and CHI (the "Purchase Agreement"), Court approval of the sale and assignment by entry of an order reasonably acceptable to Purchaser in its discretion, and the limited due diligence contingency described herein.

1. Seller: Culinary Adventures, Inc., Debtor in Possession

567 San Nicolas Drive, Suite 400
Newport Beach, CA 92660

*1760 E. Wilshire Ave.
Santa Ana, CA 92705*

And

Culinary Holdings, Inc. (as to trademarks and other intellectual property).

2. Purchaser: Levon Gugasian ("Gugasian") or designee
11 Ridgeline Drive
Newport Beach, CA 92660
3. Trademarks and other Intellectual Property: Concurrently with the execution of an asset purchase agreement between Seller and Purchaser with respect to the Purchased Assets, as that term is defined below, Seller and CHI shall enter into an asset purchase and assignment agreement (the "CHI Sale Agreement") pursuant to which CHI shall sell, transfer and assign to Seller, free and clear of all liens, claims and encumbrances, all of CHI's right, title and interest to trademarks, copyrights and other intellectual property related to the Purchased Assets and operation of the subject restaurants (collectively, the "IP"). The IP shall be included in the Purchased Assets to be sold to Purchaser. Pursuant to the CHI Sale Agreement, Seller shall pay fair and reasonable consideration to CHI for the purchase of the IP, which consideration shall be deemed as fair and reasonable by the Bankruptcy Court.
4. Liquor Licenses: Purchaser has been advised and understands that Seller (and not CHI) is the sole owner of the three (3) Liquor Licenses, which shall be included in the Purchased Assets to be sold to the Purchaser, as described below. Upon consummation of the sale transaction contemplated hereunder, \$50,000 of the purchase price to be paid by Purchaser shall be allocated to the Liquor Licenses, but shall be maintained in a segregated interest-bearing trust account of the Seller pending the transfer of the Liquor Licenses to Purchaser (the "Trust Funds"). While the sale contemplated hereunder is not conditioned on the transfer of the Liquor Licenses to Purchaser, in the event that the transfer of the Liquor Licenses is not consummated, the Trust Funds, including all accrued interest, shall be turned over to Purchaser. Additionally, Seller and John Martin shall use best efforts to effectuate the transfer of the Liquor Licenses to Purchaser in the most expedient manner possible. Further, the Bankruptcy Court presiding over Seller's bankruptcy case and the sale transaction shall issue an injunction compelling John Martin and all other authorized Liquor License signers to use their best efforts to transfer the Liquor Licenses to Purchaser and not take any action which may impair such transfers.
5. Purchased Assets: Purchaser shall purchase from the Seller and Seller shall sell to Purchaser, the following assets (the "Purchased Assets"), including: All Leasehold Interests, all existing machinery, equipment, furniture, phones, inventory, Liquor Licenses, ~~vehicles, computers, security deposits, utility deposits,~~ general intangibles, and other fixed assets currently located at 315 Pacific Coast Highway, Huntington

Beach, CA 92648, 32441 Golden Lantern, Laguna Niguel, CA 92677 and 1464 Pacific Coast Hwy, Laguna Beach, CA 92651. Purchaser shall close without the actual transfer of Liquor Licenses subject to the provisions set forth in Paragraph 3 above and acceptable temporary use or assignment of license until such time the licenses can transfer or Purchaser can obtain new licenses. In the event that the Liquor Licenses are not transferred to Purchaser and/or Purchaser is required to purchase new licenses the Trust Funds shall be turned over to Purchaser by Seller.

6. Assumed Liabilities: Purchaser shall not assume any liabilities of Seller, other than liabilities associated with contracts that the Purchaser elects to assume, including without limitations the leases of the three restaurant locations.

7. Price: Purchaser proposes to purchase from Seller the Purchased Assets for an amount of Two Million Four Hundred Thousand Dollars (\$2,400,000) (the "Purchase Price"), \$50,000 of which shall be allocated as described in paragraph 3 above. The Purchase Price will be paid in cash or cash equivalents.

8. Bid Protections: In connection with the Seller's Motion to Approve Sale and to Assume and Assign Executory Contracts (the "Sale Motion"), the Seller shall request the entry of an order approving certain bidding procedures order. As a condition of this offer, the approved binding procedures shall include: customary bidding protections to be negotiated between Purchaser and Seller, and shall contain a minimum breakup fee of Seventy Five Thousand Dollars (\$75,000). The minimum initial overbid shall be Two Million Five Hundred Thousand Dollars (\$2,500,000), and subsequent incremental overbids shall be no less than Fifty Thousand Dollars (\$50,000). Purchaser shall be entitled to "credit bid" its \$75,000 break up fee in any subsequent bids that it may elect to make.

9. Earnest Money Deposit: Upon execution of the Purchase Agreement, Purchaser shall deliver to a mutually acceptable escrow agent (the "Escrow Agent") an irrevocable Letter of Credit or cash of \$350,000 (the "Deposit"), which shall serve as the deposit during the pre-closing period. The Deposit shall be refundable in all respects, except that if the Purchaser is selected as the successful bidder at any auction sale, and fails to close after occurrence or waiver of all conditions precedent, the Deposit shall be forfeited to Seller.

10. Due Diligence Period: Upon execution of this LOI, Purchaser will have the right to conduct a due diligence investigation of Seller's assets, including the Liquor Licenses. In connection with such investigation, Seller will provide Purchaser with reasonable opportunity and access to its facilities, historical financials, tax returns and operations. The Due Diligence period shall expire at 5:00 p.m. on the day that is ten days prior to the scheduled hearing on the Sale Motion. Unless the Purchaser informs the Seller in writing, on or before the expiration of the Due Diligence Period, of its decision to withdraw its bid based on its due diligence, it will be conclusively presumed that the Due Diligence contingency has been waived by Purchaser.

11. Leases: Purchaser will assume the Leases and will cure any defaults with a dollar for dollar reduction in the purchase price based on the final cure amounts. The motion to approve sale shall include Seller's estimate of cure amounts and request to determine the amount of such cure amount necessary to be paid in connection with the assumption of the Leases. It shall be Purchaser's obligation to provide evidence of "adequate assurance of future performance" to the lessors of the Leases, under Bankruptcy Code Section 365. However, if the Bankruptcy Court determines that such adequate assurances require additional expenditure of funds by Purchaser which is greater than three months of rent at any of the three locations, it shall be within Purchaser's sole discretion whether it will close under those circumstances. If Purchaser declines to close because of increased cost associated with providing adequate assurance of future performance, Purchaser shall be entitled to the return of the Deposit and all other funds provided to Seller.

12. Executory Contracts: At Purchaser's discretion, Purchaser may elect to assume or reject any and all Executory contracts not later than five (5) days prior to the sale hearing. The motion to approve sale shall include Seller's estimate of cure amounts and request to determine the amount of such cure amount necessary to be paid in connection with the assumption of the executory contract(s). Purchaser will be required to pay any cure amounts associated with Executory Contracts it elects to assume, but shall be entitled to a dollar-for-dollar credit against the Purchase Price for any amounts so expended.

13. Bankruptcy Court Order: There shall be an order (the "Sale Order") of the Bankruptcy Court, obtained at the sole expense of Seller, which approves and authorizes the sale of the Purchased Assets, assumption and assignment of the Leases to the Purchaser, and determination of "cure" amounts, in a form reasonable agreeable to Purchaser, in its discretion. The Sale Order shall contain, at a minimum an order providing (a) that the sale is free and clear of all liens, claims and interest; (b) other than those claims agreed to be paid by the Purchaser, there shall be no cure claims associated with the Leases and executory contracts (or if there are such claims that Purchaser is required to pay, that the Purchase Price shall be reduced on a dollar-for-dollar basis); (c) that the Purchaser is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code, and a waiver of the 10-day stay periods provided for under F.R.B.P. 6004(g) and 6006(d).

[Remainder of page intentionally blank]

If these terms are agreeable, please sign and return a copy of this LOI to the undersigned at your earliest convenience, so that we may have Purchaser's counsel prepare the Purchase Agreement.

AGREED AND ACCEPTED:

Levon Gugasian

By: 

Title:

Date: 10-27-09

Culinary Adventures, Inc.

By: 

Title: CFO

Date: 10-30-09

Culinary Holdings, Inc.

By: 

Title: CFO

Date: 10-30-09

John Martin

By: